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No. 84-1985

In The

# Supreme Court of the United States

CITY OF EUCLID, OHIO,

*Petitioner,*

vs.

GRACE MABEL, et al.,

*Respondents.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO**

## BRIEF FOR RESPONDENTS IN OPPOSITION

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## QUESTIONS PRESENTED FOR REVIEW

I. Whether City of Euclid Ordinance No. 75-1982, codified as § 1743.32(h) of the Codified Ordinances of the City of Euclid, violates Respondents' rights to the Freedom of Speech guaranteed by the First Amendment to the Constitution of the United States, and § 11, Article I of the Constitution of Ohio.

II. Whether City of Euclid Ordinance No. 75-1982, codified as § 1743.32(h) of the Codified Ordinances of the City of Euclid, violates the Respondents' rights to the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

## PARTIES BELOW

The Respondents are seven defendants, residents of the City of Euclid, Ohio, who were criminally prosecuted for violating City of Euclid Ordinance No. 75-1982, codified as § 1743.32(h) of the Codified Ordinances of the City of Euclid. Their names are Grace Mabel, V.T. Cicek, Casimir Choromanski, Jeane Zupanic, Carmen Tarantino, Phyllis Jordan and James Fratcher.

In the appeal to the Ohio Supreme Court, the following cases were consolidated: Case No. 84-1836, City of Euclid vs. Grace Mable; Case No. 84-1837, City of Euclid vs. V.T. Cicek; Case No. 84-1838, City of Euclid vs. Choromanski; Case No. 84-1839, City of Euclid vs. Zupanic; Case No. 84-1840, City of Euclid vs. Tarantino; Case No. 84-1841, City of Euclid vs. Jordan; and Case No. 84-1842, City of Euclid vs. Fratcher.

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## STATEMENT OF THE CASE

This case arises from the criminal prosecution of seven (7) Euclid residents: Grace Mable, V. T. Cicek, Casimir Choromanski, Jeane Zupanic, Carmen Tarantino, Phyllis Jordan and James Fratcher. These residents were found guilty for violating City of Euclid Ordinance 75-1982, codified as § 1743.32(h) of the City, which prohibits the placement of political lawn signs in residential areas.

On November 11, 1983, the seven residents were arraigned in Euclid Municipal Court, whereupon all entered pleas of not guilty.

On November 25, 1983, all seven residents were found guilty in a trial to the Euclid Municipal Court.

Upon appeal to the Eighth Judicial District of the Court of Appeals of the State of Ohio it was held that the subject ordinance was unconstitutional, the decision was journalized on September 27, 1984.

On March 20, 1985, the Supreme Court of the State of Ohio, upon considering the Motion by the City of Euclid for an Order directing the Court of Appeals for Eighth Judicial District to certify its record and the claimed appeal as of right from that Court, said order was overruled and the appeal was dismissed for the reason that there existed no substantial constitutional question therein.

## REASONS FOR DENYING THE WRIT

### A. THE DECISION BELOW RESTS UPON AN INDEPENDENT AND ADEQUATE STATE GROUND.

There is a requirement of showing, for purposes of the Appellate Jurisdiction of the United States Supreme Court over State Court judgments, the presence of a federal question in the State Court proceedings and its determination by the State Courts. This results from Federal Statutes conferring upon the United States Supreme Court jurisdiction to review final judgments of a State Court. The statute conferring upon the United States Supreme Court jurisdiction to review, by appeal or Writ of Certiorari, final decisions of the highest state court in which a decision could be had, is contained in 28 U.S.C. § 1257, which reads as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: (1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.
>
> (2) By Appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
>
> (3) By writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repug-

nant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

The foundation for 28 U.S.C. § 1257 extends as far back as § 25 of the Judiciary Act of 1789, which was passed by the first Congress of the United States. That statute described the issues upon which the United States Supreme Court might review a final judgment or decree of a state court in substantially the same way as these issues are described in 28 U.S.C. § 1257. The major difference between that statute and § 1257 is that there was a provision contained for a Writ of Error, which was abolished in 1928 and appeals were substituted therefor. The present provisions in 28 U.S.C. § 1257 were adopted in 1948.

It is essential to the jurisdiction of the United States Supreme Court in reviewing a State Court decision that the record affirmatively show not only that a federal question was presented for decision to the highest court of the state having jurisdiction, but that its decision of the Federal question was necessary to the determination of the cause, in that it was actually decided that the judgment as rendered could not have been given without deciding it, or in other words, that the State courts decision of the federal question was necessary to the determination of the cause. *Lynch vs. New York,* 293 U.S. 52, 79 L.Ed. 191, 55 S. Ct. 16 (1934); *Honeyman vs. Hanan,* 300 U.S. 14, 81 L.Ed. 476, 57 S. Ct. 350 (1937).

The City of Euclid, Ohio petitions the Supreme Court of the United States for a Writ of Certiorari pursuant to 28 U.S.C. § 1257(3).

The fundamental issue in a Petition for a Writ of Certiorari to the United States Supreme Court is whether the decision of the State Court rested on an independent and adequate state ground.

"If the judgment below rested on an independent and adequate state ground, the Writ of Certiorari should be dismissed as improvidently granted, *Wilson vs. Lowe's Inc.,* 355 U.S. 597, 21 L.Ed.2d 519, 78 S. Ct. 526 (1958), for 'our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights, and our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the State Court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion.'" *Herb vs. Pitcarin,* 324 U.S. 117, 125-126, 89 L.Ed. 789, 65 S. Ct. 459 (1945).

Page A1 is the first page of the appendix. On that page is the order of the Supreme Court of Ohio dismissing the appeal. On page A2, the second page of the Appendix, the Journal Entry and the Opinion of the Court of Appeals of the Eighth Judicial District of Ohio is found. It is this decision upon which rests the state court's judgments. The Assignments of Error found in that opinion clearly set forth that the convictions of the seven individuals were appealed under the unconstitutionality of the ordinance as it violates section 11, Article 1, of the Constitution of the State of Ohio. Consequently, the de-

cision of the Court of Appeals was reached under the Federal Constitution and "under the Ohio Constitution as well." On page A6 of the appendix, the Court of Appeals noted that the city has singled out and prohibited lawn signs on residential property which carried political messages. "The city has thereby impermissibly decided which viewpoints may and may not be conveyed through this medium of communication. This is exactly the type of content discrimination prohibited by the first amendment, . . . and prohibited by Article I, Section 11 of the Ohio Constitution."

The Appellate Court went on to state:

"We hold, therefore, that Euclid ordinance § 1743.32 (h) is invalid on its face. The ordinance impermissibly discriminates on the basis of content in violation of the first amendment to the United States Constitution . . . and Article I, section 11 of the Ohio Constitution and is therefore unconstitutional in every conceivable application."

Because the Ohio Court rested its decision on both state and federal grounds, either of which have been despositive, the Supreme Court of the United States would have no jurisdiction. *Fox Film Court vs. Muller,* 296 U.S. 207, 80 L.Ed. 158, 56 S. Ct. 183 (1935); *Enterprise Derogation District vs. Farmers Mutual Canal Company,* 243 U.S. 157, 164, 61 L.Ed. 644, 37 S. Ct. 318 (1917).

Because the Court of Appeals of the Eighth Judicial District of Ohio based its decision upon separate, adequate and independent state grounds this Court must not review that decision.

"If the State Court decision indicates clearly and expressly that it is alternatively based on bona fide sep-

arate, adequate, and independent ground, we, of course, will not undertake to review the decision." *Michigan vs. Long,* 103 S. Ct. 3469, 3476 (1983).

The State Court opinion, upon which the Supreme Court of the State of Ohio based its decision not to hear the case, based its decision on a state constitutional provision. ". . . by invoking a State constitutional provision a State Court immunizes its decision from review by this [United States Supreme] Court." *Patton vs. New York,* 100 S. Ct. 1371, 1387 63 L.Ed.2d 639 (1980).

## III. CONCLUSION

Based upon the authorities cited and the reasons discussed above the United States Supreme Court should not review this case. Accordingly the Petition for Writ of Certiorari must be denied.

Respectfully submitted,

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# APPENDIX

## ORDER OF THE SUPREME COURT OF OHIO DISMISSING APPEAL

(Dated March 20, 1985)

Case Nos. 84-1836, 84-1837, 84-1838, 84-1839, 84-1840, 84-1841, 84-1842

THE SUPREME COURT OF OHIO

COLUMBUS

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CITY OF EUCLID,

*Appellant,*

v.

GRACE MABEL, *et al.,*

*Appellees.*

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JUDGMENT ENTRY

Upon consideration of the motion for an order directing the Court of Appeals for Cuyahoga County to certify its record and the claimed appeal as of right from same said Court, it is ordered by the Court that said motion is overruled and the appeal is dismissed sua sponte for the reason that no substantial constitutional question exists therein.

/s/ FRANK D. CELEBREZZE
*Chief Justice*

# JOURNAL ENTRY AND OPINION OF THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO

(Dated September 27, 1984)

## COURT OF APPEALS OF OHIO

EIGHTH JUDICIAL DISTRICT OF OHIO,
COUNTY OF CUYAHOGA

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CITY OF EUCLID,
*Plaintiff-Appellee,*

vs.

GRACE MABEL (47856)
VICTORIA CICEK (47857)
CASIMIR CHOROMANSKI (47858)
JEANE ZUPANIC (47859)
CARMEN TARANTINO (47860)
PHYLLIS JORDAN (47861)
JIM FRATCHER (47862),
*Defendants-Appellants.*

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NAHRA, J.:

Grace Mabel, Victoria Cicek, Casimir Choromanski, Jeane Zupanic, Carmen Tarantino, Phyllis Jordan and Jim Fratcher, appellants, were convicted of violating City of Euclid Ordinance § 1743.32(h),[1] which prohibits political

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1. The challenged ordinance provides that:

> Political graphics shall be permitted for a period of not more than seventeen days before and five days after an election, with the size of the graphics not to exceed two square feet in area per graphic and such graphics to be located within an occupied residence as window graphics not to exceed two political graphics per residence.

Codified Ordinance Euclid § 1743.32(h) (1982).

lawn signs on residential property. Appellant Jim Fratcher had political advertising attached to the outside of his front storm door, and the remaining appellants had signs on their front lawns which advertised the election of a political candidate. After the trial court denied appellants' motions to dismiss, thus upholding the validity of the ordinance, appellants pled no contest. The trial court found appellants guilty, fined each appellant ten dollars, and placed all of them on probation. Appellants timely appealed.

I.

Appellants' first two assignments of error are that:

I. The trial court erred in overruling appellants' motion to dismiss the charges against appellants in that the ordinance upon which the City of Euclid's criminal prosecution was brought is a denial of appellants' rights to the freedom of speech secured by the First Amendment to the Constitution of the United States, and Section 11, Article I, of the Constitution of Ohio.

II. The trial court erred in overruling appellants' motion to dismiss the charges against the appellants in that the ordinance upon which the City of Euclid's criminal prosecution was brought is a denial of appellants' rights to the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States.

These two assignments of error will be discussed together since appellants' equal protection argument, discrimina-

tion based upon content, lends itself to traditional freedom of speech analyses.

Section 1743.32(h) of the Codified Ordinances of the City of Euclid provides that:

> Political graphics shall be permitted for a period of not more than seventeen days before and five days after an election, with the size of the graphics not to exceed two square feet in area per graphic and such graphics to be located within an occupied residence as window graphics not to exceed two political graphics per residence.

Appellants contend that this ordinance denies free speech since it discriminates on the basis of content. The City argues that the ordinance is content neutral, that it represents a reasonable time, place or manner regulation, and that it serves compelling government interests.

The challenged ordinance has been declared unconstitutional under the federal constitution in *Meros v. City of Euclid*, No. C83-4353 (N.D. Ohio Aug. 17, 1984) and we reach the same conclusion here under the Ohio Constitution as well.

The United States Supreme Court has recently addressed similar challenges under the First Amendment[2] utilizing two different approaches. In some cases, the Court has applied a test to determine whether an ordinance is unconstitutional on its face. *See, e.g., Members of City Council v. Taxpayers for Vincent* (1984), 104 S. Ct. 2118.

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2. The First Amendment provides, in relevant part, that "Congress shall make no law . . . abridging the freedom of speech . . . ." U.S. Const. amend. I.

In other cases, the Court has applied a balancing test to determine whether the government has a compelling interest which overrides the First Amendment rights of the private party. *See, e.g., Consolidated Edison v. Public Service Commission* (1980), 447 U.S. 530. We will apply both tests in our review of Euclid's ordinance.

The First Amendment to the United States Constitution and Article I, Section 11[3] of the Ohio Constitution protect the exercise of free expression. Freedom of speech, however, is not absolute, and several categories of expression have been exempted from First Amendment protection. *E.g., Miller v. California* (1973), 413 U.S. 15 (obscenity); *Bradenburg v. Ohio* (1969), 395 U.S. 444 (speech inciting immediate unlawful action); *Chaplinsky v. New Hampshire* (1942), 315 U.S. 568 (fighting words). Political speech, unlike the unprotected categories of expression, is at the core of the First Amendment and is therefore "entitled to the fullest possible measure of constitutional protection . . . ." *Members of City Council v. Taxpayers for Vincent* (1984), 104 S. Ct. 2118, 2135.

### *A. Facial Analysis*

An ordinance may be declared invalid on its face if it is unconstitutional in every conceivable application. *Taxpayers*, 104 S. Ct. at 2124. It is well-established that generally the government cannot restrict expression on

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3. Article I, Section 11 provides, in relevant part, that "[e]very citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge, the liberty of speech; or of the press." Ohio Const. Art. I, § 11.

the basis of its subject matter.[4] *See, e.g., Police Department v. Mosley* (1972), 408 U.S. 92, 95. "To allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth." *Consolidated Edison v. Public Service Commission* (1980), 447 U.S. 530, 538. As a result, a City may not select a particular type of speech for differential treatment. *Metromedia, Inc. v. San Diego* (1981), 453 U.S. 490, 514.

In this case, the City has singled out and prohibited lawn signs on residential property which carry political messages. Real estate lawn signs and other commercial lawn signs are permitted. The City has thereby impermissibly decided which viewpoints may and may not be conveyed through this medium of communication. This is exactly the type of content discrimination prohibited by the First Amendment, *see Metromedia,* 453 U.S. 490; *Carey v. Brown* (1980), 447 U.S. 455; *Norton Outdoor Advertising v. Arlington Heights* (1982), 69 Ohio St. 2d 539, and prohibited by Article I Section 11 of the Ohio Constitution.

The City argues, however, that the ordinance is content-neutral since it does not discriminate against any one particular political view in favor of another. The United

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4. Only in two narrowly-drawn exceptions were government regulations based on content upheld. In *Greer v. Spock* (1976), 424 U.S. 828, and *Lehman v. Shaker Heights* (1974), 418 U.S. 298, private parties asserted a right of access to public facilities. These cases were subsequently distinguished and held inapplicable to challenges by a private party seeking to use his own property to express his views rather than seeking access to public facilities. *See Consolidated Edison v. Public Service Commission* (1980), 447 U.S. 530.

States Supreme Court specifically rejected an analogous concept of neutrality in *Consolidated Edison.* In that case, the Public Service Commission argued that because its prohibition against the discussion of nuclear power, both pro and con, in utility bill inserts was related to the broad subject matter rather than to the views of a particular speaker, its ban should be upheld. In rejecting this argument, the Supreme Court stated that "[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." *Consolidated Edison,* 447 U.S. at 537; *see also Metromedia,* 453 U.S. at 518. We similarly reject this argument.

The City further contends that its ordinance is a reasonable time, place or manner restriction because it merely regulates the size and location of political signs by permitting two political messages in residential windows. There is no question that reasonable time, place or manner regulations may be imposed upon the various methods of speech to prevent the frustration of legitimate government goals. *See, e.g., Heffron v. Int'l Soc. for Krishna Consc.* (1981), 452 U.S. 640. However, these regulations must apply to all speech irrespective of content. *Erznoznik v. Jacksonville* (1975), 422 U.S. 205, 209. Therefore, in order to withstand a constitutional challenge, "time, place, or manner restriction[s] may not be based upon either the content or subject matter of speech." *Consolidated Edison,* 447 U.S. at 536. Because the City's ordinance regulates on the basis of subject matter, *i.e.,* only political graphics are so regulated, the ordinance cannot be upheld as a content-neutral reasonable time, place or manner regulation.

We hold, therefore, that Euclid Ordinance § 1743.32 (h) is invalid on its face. The ordinance impermissibly discriminates on the basis of content in violation of the First Amendment to the United States Constitution, *Meros v. City of Euclid,* No. C83-4353 (N.D. Ohio Aug. 17, 1984), and Article I, Section 11 of the Ohio Constitution and is therefor unconstitutional in every conceivable application.

*B. Competing Interests Analysis*

An ordinance which restricts the speech of a private individual "may be sustained only if the government can show that the regulation is a precisely drawn means of serving a compelling [government] interest." *Consolidated Edison,* 447 U.S. at 540. The City contends that its ordinance prevents a public nuisance, avoids and prevents local crime, preserves safe highways, and preserves the aesthetics of the community. The trial court, in its opinion upholding the City's ordinance, stated that:

> automobiles have been driven up across sidewalks over lawns to strike down political graphics emplanted in front lawns that political graphics have been thrown through windows, that they have been torn down by vandals, thrown out into the streets where the political graphics are run over by automobiles causing damage to persons and property. The police are constantly called during the political season when such graphics are posted in front lawns as result of political graphics being vandalized.

Trial Op. at 2.

We conclude that none of the government interests advanced are compelling in order to suppress the political

speech of individuals through the use of lawn signs on their own property. Lawn signs as a medium of communication are unique. The United States Court of Appeals for the Ninth Circuit, in striking down an ordinance which, among other things, banned temporary signs from residential areas, stated that:

> the First Amendment interests involved in the display of political posters adjacent to public thoroughfares are substantial. Moreover, means of political communication are not entirely fungible; political posters have unique advantages. Their use may be localized to a degree that radio and newspaper advertising may not. With exception of handbills, they are the least expensive means by which a candidate may achieve name recognition among voters in a local election.

*Baldwin v. Redwood City* (9th Cir. 1976), 540 F.2d 1360, 1368 (footnote omitted). Similarly, the United States District Court for the Northern District of California expounded on the importance of political signs by stating that:

> The temporary political sign offers special advantages to the candidate seeking public office and to the advocate promoting a particular position on a state ballot measure. These signs are a relatively inexpensive means of campaigning. Their use can be localized so that certain areas which the advocate wishes especially to reach may be targeted. A candidate or partisan can use the temporary sign to place a name or an issue before the public. In a campaign for political office, political posters can be effectively utilized to build up the candidate's name recognition

> and to establish him as a serious contender. The temporary political sign has special value to the non-incumbent or relatively unknown candidate who can use the signs to identify his name among the electorate. The less well-known candidate can test the waters to see whether his candidacy is viable before going to more expensive media such as television or radio.

*City of Antioch v. Candidates' Outdoor Graphic Serv.* (N.D. Cal. 1982), 557 F.Supp. 52, 59. We agree with the federal courts and recognize the importance of political signs as a medium of communication.

In *Peltz v. South Euclid* (1967), 11 Ohio St. 2d 128, the City banned all political signs except bumper stickers. The Supreme Court of Ohio declared the ordinance unconstitutional. *See also Pace v. Walton Hills* (1968), 15 Ohio St. 2d 51. With regard to aesthetics, the Court stated that:

> The ordinance in question sweeps away the right of a property owner to express his opinion on his own property. Defendant's interest in aesthetics does not reasonably outweigh the loss of plaintiff's liberty of speech.

*Peltz,* 11 Ohio St. 2d at 133; *see also Baldwin,* 540 F.2d at 1370 (less restrictive means available); *Antioch,* 557 F. Supp. at 59; *State v. Miller* (1980), 83 N.J. 402; *City of Cleveland v. Walters,* No. 39302 (8th Dist. Ct. App. Feb. 15, 1979); *but cf. Members of City Council v. Taxpayers for Vincent* (1984), 104 S.Ct. 2118 (city may prohibit the posting of political signs on public property for aesthetic reasons).

The Supreme Court of Ohio went on to say in *Peltz* with respect to traffic that:

> The ordinance is not saved by its purpose to eliminate traffic hazards on main thoroughfares and at street intersections. The proscription is against *all* political signs, irrespective of location. Even the regulation of traffic may not be attempted by means which invade explicit constitutional liberties. *Natl. Assn. for Advancement of Colored People v. Alabama,* 377 U.S. 288, 12 L.Ed. 2d 325, 84 S. Ct. 1302. There is nothing in this record to convince us that a political sign is a greater traffic hazard than all the other features of the landscape which, purposely or not, tempt the attention of drivers. Furthermore, it is difficult to conceive that a political sign, reasonable in size, structure and appearance, would constitute a hazard greater than "bumper stickers" which are expressly permitted by another ordinance of South Euclid, and which, by definition, are not restricted to a specific locality.

*Peltz,* 11 Ohio St. 2d 133-134.

Nor can the City justify its ordinance suppressing free speech on private property by stating that political lawn signs on residential property create public nuisances or attract vandals. It is within the power of the City to enact legislation regarding the maintenance of political lawn signs, the removal of obsolete signs, and the defacing or vandalizing of political lawn signs. *See Peltz,* 11 Ohio St. 2d at 133. The City has enacted similar ordinances with respect to commercial signs. *See, e.g.,* Codified Ord. Euclid § 1743.17.

For all of these reasons, we conclude that the City has failed to demonstrate interests which override the private individual's right to free political expression through the use of lawn signs on his own property. Therefore, under both tests set forth by the United States Supreme Court and the tests of Ohio, we find the City's ordinance invalid. Appellants' first two assignments of error are sustained.

II.

Appellants' third assignment of error is that:

> III. The trial court erred in taking judicial notice of facts which should have been proven to the trier of fact.

The trial court in its opinion denying appellants' motions to dismiss stated that:

> From the arguments brought before this court, from prior cases brought before this court involving political graphics and from personal experience, the Court takes notice that automobiles have been driven up across sidewalks over lawns to strike down political graphics emplated in front lawns, that political graphics have been thrown through windows, that they have been torn down by vandals, thrown out into the streets where the political graphics are run over by automobiles causing damage to persons and property. The police are constantly called during the political season when such graphics are posted in front lawns as a result of political graphics being vandalized.

Trial Op. at 2. Appellants contend that these facts are not of the type that are judicially noticeable and that these facts were judicially noticed without informing appellants.

The record indicates that at the hearing on their motion, appellants, through their counsel, admitted that lawn signs are vandalized and cause litter. Tr. 5-6. These facts are therefore undisputed, and the trial court may properly take judicial notice of undisputed facts. *See Brown v. Cleveland* (1981), 66 Ohio St. 2d 93, 98. In addition, the record is void of any request by appellants for an opportunity to be heard as to the propriety of the court's action pursuant to Ohio R. Evid. 201(E). Consequently, this assignment of error is overruled.

III.

Appellants' last assignment of error is that:

> IV. The trial court erred by considering as evidence the affidavits submitted by the city prosecutor, thereby denying appellants their rights to confront the witnesses against them secured by the sixth amendment to the constitution of the United States.

The criminal rules of procedure permit affidavits to be attached to motions. Ohio R. Crim. P. 47. In fairness, the responding party is also permitted to attach affidavits to his brief in opposition. No confrontation rights are denied by this rule in this situation. Therefore, the trial court did not err in considering the affidavits attached to the City's brief in opposition to appellants' motions to dismiss. Accordingly, this assignment of error is overruled.

The judgment of the trial court is reversed, and this cause is remanded for proceedings consistent with this opinion.

This cause is *reversed and remanded to the Euclid Municipal Court for further proceedings consistent with this opinion.*

It is, therefore, considered that said appellant(s) recover of said appellee(s) *their* costs herein.

It is ordered that a special mandate be sent to said Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

PARRINO, *P.J.*
RUSSO, *J.*, Concur.

/s /JOSEPH J. NAHRA,
*Judge*

## UNITED STATES CONSTITUTION

### AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein

they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## OHIO CONSTITUTION

### ARTICLE I

§ 11 [Freedom of speech and of the press; libel.]

Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged was libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted. (See Const 1802, Art VIII, § 6.)

## EUCLID CODIFIED ORDINANCES

§1743.32(h):

> Political graphics shall be permitted for a period of not more than seventeen (17) days before and five (5) days after an election, with the size of said graphics not to exceed two square feet in an area per graphic and said graphics to be located within an occupied residence as window graphics not to exceed two political graphics per residence.